

**Himachal Pradesh Real Estate Regulatory Authority,
Annexe Building ,Majitha House, Shimla-2**

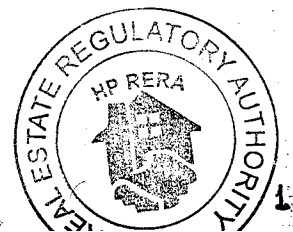
PROCEEDING OF THE DAY

Date & Time	11nd November, 2021 at 3:30 PM through Webex
Execution Petition No. 12/2021	Sh. Ghanshyam Gupta V/s Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Suo Motu Execution Petition No. 05/2021	H.P. Real Estate Regulatory Authority V/s Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Decree Holder	Sh. Ghanshyam Gupta, S/O Late Sh. Ramji Lal Gupta, R/O Plot No. 168, Sector-15 A, Noida, Uttar Pradesh, PIN- 201301
Represented through	Sh. Vijay Kumar Arora, Ld. Advocate
Judgement Debtor	Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Respondent Represented through	Sh. Arvind Kumar Singh, Ld. Advocate

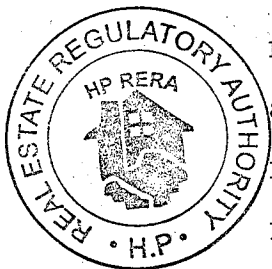
ORDER

CORAM: - Chairperson and both Members

In terms of previous order, response was filed by the DH to the objection filed by the JD and the matter was listed for argument on 21st October, 2021. The Authority by way of this order is deciding the objections of the JD filed in the execution petition.

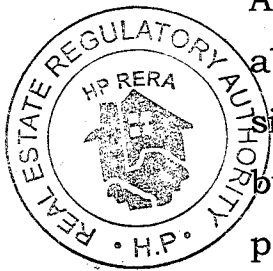


The JD by way of these objections has contended that the decree holder has not only concealed the material facts but has also obtained the decree by playing fraud on this Authority. The JD submitted that as mentioned in para 6 of the judgment/order, it had been admitted by the DH that though he had not signed the MOU dated 13.01.2021, the terms and conditions of the same are binding on the Complainant/DH. JD has further submitted that the DH was liable to make the balance payment in terms of the aforesaid MOU but he did not do the same. He prayed that the order dated 18.01.2021, which is sought to be executed by the present proceedings has been obtained by playing fraud on this Authority and therefore the present proceedings are liable to be dismissed with heavy cost. JD has also relied upon a judgment of Hon'ble Supreme Court in S.P. Chengalvaraya Naidu Vs Jagannath 1994 AIR 853 wherein it has been held that a person whose case is based on falsehood, has no right to approach the court. It has been further submitted by the JD that the completion of the project was delayed due to changes of law/Acts including the repeal of H.P. Apartment and Property Regulation Act, 2005 and amendment in Himachal Pradesh Town and Country Planning Act, 1977 which were beyond JD's control and amounted to force majeure. It has been further alleged that the DH and other buyers were informed from time to time about developments in the project, including the formalities required to be fulfilled by the JD/promoter on account of aforesaid changes in the law/Acts. The fact that DH and other buyers neither raised any dispute before any forum nor did they make any demand for refund from the JD from 01.01.2009 till the filing of the complaint with this Authority proves that they were fully satisfied with the efforts of the JD. It has been submitted that DH is not entitled to any relief as they were themselves



responsible for the delay in the completion of the project. The JD has further alleged that the direction of the Authority in the order dated 18.01.2021 whereby the JD has been barred from selling/allotting/booking any unsold/unbooked flats in the project in question is illegal and unjustified, particularly when on account of non-payment by the buyers, including the DH, the progress of the project was hampered. It has been further contended that the present execution petition is premature as the JD is permitted to complete the project upto 10.05.2024 in terms of the registration certificate dated 11.05.2020 issued by this Authority. The JD further submitted that in view of the various judgments of the Hon'ble Supreme Court including LIC V/s Escorts (1986) 1 SCC 264, corporate veil of a Company can be lifted only in exceptional case of fraud, improper conduct, evasion of taxes, etc. and none of the said grounds are available in the present case. It has been submitted that the promoters have invested not only 100 percent of the total invested amount but also huge funds from their own resources.

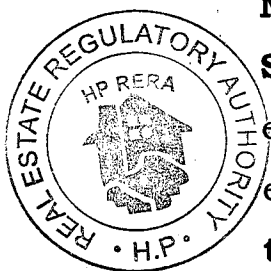
The DH has filed a written response to the aforesaid objections, whereby he has denied the objections of the JD and has submitted that, it is the JD who had cheated the investors including the DH as at the time when the flats were booked the JD did not have requisite permissions. The DH has further submitted that judgment dated 18.01.2021 passed by the Authority is well reasoned and justified. In respect of the abovementioned MOU, the DH has submitted that it was signed by the JD after strenuous efforts of the DH and other buyers after JD failed to take concrete steps qua the delivery of possession of flats till 2015. As per the MOU, the possession was to be delivered by 15.10.2016. Thus, it has been contended that JD has cheated the DH by failing to deliver the flat to him. Qua the allegation of the JD against the DH and other buyers



as to the delay in completion of project, it has been submitted that Authority has adjudicated the aforesaid issue vide the abovementioned order and now at the stage of execution the JD cannot take such kind of pleas. Lastly, the DH has submitted that JD has violated the order passed by the Ld. Authority by not complying it in letter and spirit and has sought execution of the order by either attaching/selling of the property or by way of arrest and detention under the relevant provisions of the Code of Civil Procedure, 1908. He has further prayed for a direction to the JD to file an undertaking of his assets.

Arguments heard. Primarily the JD has re-iterated his submissions made in the objections and prayed for dismissal of the execution petition. In response the Ld. Counsel for the DH, Sh. Vijay Kumar Arora has argued that the Authority has passed the order sought to be executed by the present proceedings after careful perusal of the record of the case and that the JD cannot take the aforesaid pleas at the stage of execution. He has further submitted that the appropriate recourse available with the JD was to prefer an appeal in terms of the Act before the appropriate forum. He argued that it is a fit case for the Authority to get its order executed by taking coercive measures.

This Authority has heard both the parties and gone through the record. The **Hon'ble High Court of Himachal Pradesh in Nalagarh Dehati Cooperative Transport Society versus Suraj Mani 1976 Shimla Law Journal page 172** held that executing court cannot go behind the decree even if it is erroneous on law or facts. **Hon'ble Supreme Court in case titled as Rajasthan Financial Corporation versus Man Industrial Corporation Ltd. (2003)7 SCC 522 and Rameshwar Das Gupta versus State of UP and another**



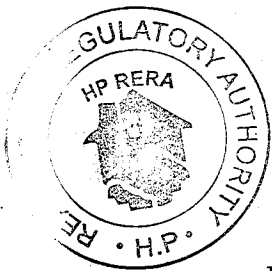
(1996) 5 SCC 728 has held that executing Court cannot go behind the decree and it has take the decree according to its tenor. The Hon'ble Supreme Court in the case of **Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Ors. (1970)1 SCC 670** held as under

“6. A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.”

Further the ratio of the judgment in **Mohd. Masthan vs Society of Congregation of the Brothers of the Sacred Heart and another(2006) 9 SCC 344 or MANU/SC/1375/2006** it was held by the Hon'ble Apex Court that executing court would not enter into the question that the decree sought to be executed was obtained by fraud or by collusion.

From the aforesaid it is settled law that the executing court cannot go behind the decree. The order/decree has been passed after considering all the facts by the Authority. Further, in case JD was actually aggrieved by the order, then he could have filed appeal which right he has chosen not to exercise. Therefore it can safely be concluded that the judgment/decree is reasoned one and binding on both the parties and the objections of the JD cannot be sustained.

Having considered the entire submissions made by the Learned Counsels for the decree holder and judgment debtor, it is hereby held that the order dated 18.01.2021 is binding on



both the parties and the objections of the JD are hereby dismissed.

In the interest of justice, JD is granted one last opportunity to comply with the order under execution dated 18.1.2021 and refund the decretal amount along with interest and penalty in terms of the aforesaid order on or before the next date of hearing. If the JD fails to fully satisfy the decree before the next date i.e. 1st December, 2021, he is further liable under Section 63 of the Act, to pay a penalty of Rs. 5000/- per day for each day of default in complying with this order starting from the next i.e. 2nd December, 2021. Both the parties are directed to be personally present on the next date.

List the matter for physical hearing on 1st December, 2021 at 3 PM.

B.C. Badalia
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MEMBER

skand
Dr. Shrikant Baldi
CHAIRPERSON

Rajeev Verma
Rajeev Verma
MEMBER

